IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 17TH NOVEMBER 2006 / 26TH KARTHIKA 1928

Crl.MC.No. 771 of 2005()

ST.5558/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM
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PETITIONER: ACCUSED

C.RAMKUMAR, DEEPAM, MANISSERY,
OTTAPPALAM, PALAKKAD DISTRICT.

BY ADV. SRI.M.T.SURESHKUMAR

RESPONDENTS: COMPLAINANT & STATE
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1. SRI.P.V.VIJAYARAGHAVAN,
CHAYA, MANNISSERIL AMSOM, OTTAPPALAM TALUK,
PALAKKAD DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. SRI.P.VIJAYA BHANU &
SMT.P.MAYA
R2 BY PUBLIC PROSECUTOR SRI K.G.BHASKARAN.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NO.771 of 2005

DATED THIS THE 17TH DAY OF NOVEMBER 2006

ORDER

The petitioner, who is the accused in S.T.Case No.5558/2003 in the file of the Judicial First Class Magistrate Court, Ottappalam with respect to the offence under Section 138 of the negotiable Instruments Act, has sought for getting the proceedings quashed alleging that the re-presentation of the cheque and sending the second notice demanding payment are illegal and not permitted by the provisions of Section 138 of the N.I.Act.

2.Annexure-A is the copy of the complaint wherein it is mentioned that the cheque was presented on 29-4-2003 and the same got dishonoured for want of funds in the account of the accused and lawyer notice intimating dishonour and demanding payment was sent on 9-5-2003 and on 25-5-2003 the complainant received lawyer notice mentioning that only a blank paper was received in the cover. Thereupon the complainant again re-presented the cheque on 6-6-2003. The cheque was again dishonoured for funds insufficient. The complainant issued lawyer notice dated 12-6-2003 demanding

payment. The accused replied alleging that the signed blank cheque given to him has been misused inserting a exorbitant amount and also raising further untenable contentions.

3. I find that as per the recitals in the complaint the situation is squarely covered by the decision of the Supreme Court in **Dalmia Cement Ltd. v. Galaxy Traders & Agencies, 2001(1)KLT 528.** The fact situation in the above cited decision is similar as to the one in the instant case. The court has approved the stand taken by the complainant therein that he has sent a fresh notice and it is thereupon the cause of action has arisen.

4. In the circumstances, I find that the contention of the petitioner/accused as to the maintainability of the complaint under Section 138 of the N.I.Act is absolutely unfounded and liable to be rejected.

In the result the Crl.M.C.is dismissed.

K.R.UDAYABHANU, JUDGE

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